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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101



MAY 4 1989

RECEIVED

MAY 1 1989
HEARINGS CLERK
EPA-REGION X

REPLY TO
ATTN OF:

M/S S0-125

Mark Davis
Suite 3500, First Interstate Tower
1300 S.W. Avenue
Portland, Oregon 97201

Re: S.J. Nudelman and Son, Incorporated
Docket No. 1088-09-33-2615

Dear Mr. Davis:

Enclosed is a copy of the Motion, Stipulation, & Order Extending Time to File an Answer in the above-entitled matter. Pursuant to our telephone conversation of May 3, 1989, the new date for filing the Answer is May 26, 1989.

Also enclosed is the original of the Consent Agreement and Final Order (CAFO) that was faxed to David Blount for review on May 2. I understand that Mr. Blount has approved the CAFO as written and requested that I send it to you for forwarding to S.J. Nudelman and Son, Incorporated, for signature. Upon return of the signed original, I will sign and forward it to the Regional Administrator for signature. I will then forward a conformed copy of the CAFO to Mr. Blount.

Sincerely,

A handwritten signature in cursive script, reading "Deborah E. Hilsman".

Deborah E. Hilsman
Acting Assoc. Regional Counsel

Enclosures (2)

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2
3 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
4 BEFORE THE REGIONAL ADMINISTRATOR
5 Region 10
Seattle, Washington

6 IN THE MATTER OF:)
7 S.J. NUDELMAN & SON, INC.,) Docket No. 1088-09-33-2615
8 Respondent.) MOTION, STIPULATION, & ORDER
9) FOR EXTENSION OF TIME TO FILE
ANSWER

10 MOTION AND STIPULATION

11 The parties in the above-entitled matter jointly
12 request and stipulate that the time for Respondent to file an
13 answer be extended in order to allow the parties sufficient time
14 to attempt to resolve the matter.

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16
17 Dated: May 4 1989

- David Blount by Deborah E.
FOR RESPONDENT *filed per phone report 5/5/89*

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19
20 Dated: May 4 1989

Deborah E. Blount
FOR EPA

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27 MOTION, STIPULATION, & ORDER FOR EXTENSION OF TIME - 1
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1 In accordance with 40 C.F.R. §§ 207(b) and 22.16(c)
2 and pursuant to the parties' approval by the signature(s)
3 affixed above, the time for Respondent to file an answer is
4 extended to the close of business on the 26th day of May, 1989.

5 Dated: May 4, 1989

6 ROBIE G. RUSSELL
7 REGIONAL ADMINISTRATOR

8 Muskegon L. Atkinson
9 By Direction
10 Hearing Clerk, EPA Region 10
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MOTION, STIPULATION, & ORDER FOR EXTENSION OF TIME - 2

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9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 BEFORE THE REGIONAL ADMINISTRATOR
Region 10
Seattle, Washington

11 IN THE MATTER OF:)
12 S. J. NUDELMAN AND SON, INC.,) Docket No. 1088-09-33-2615
13 Respondent.) CONSENT AGREEMENT AND
14) FINAL ORDER

15 CONSENT AGREEMENT

16 WHEREAS the United States Environmental Protection
17 Agency ("EPA") as Complainant, and S. J. Nudelman and Son, Inc.
18 ("Nudelmans") as Respondent, the parties herein, having signed
19 this Consent Agreement and having consented to its filing and
20 the entry of a Final Order in the form attached hereto,

21 NOW THEREFORE, before the taking of any testimony,
22 without any adjudication of any issues of fact or law herein,
23 and without any admission of violation, the parties agree to
24 comply with the terms of this Consent Agreement and
25 (the attached) Final Order ("CAFO").
26
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1 I. PRELIMINARY STATEMENT

2 A. EPA initiated a civil administrative proceeding
3 for the assessment of a civil penalty pursuant to Section 16(a)
4 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section
5 2601, et seq.

6 B. An Administrative Complaint and Notice of
7 Opportunity for Hearing was filed on November 4, 1988, and
8 thereafter properly served by mail.

9 C. On January 19, 1989, Nudelmans and EPA conducted
10 a conference by telephone for the purpose of discussing a
11 settlement of this action. A settlement in principle was
12 reached between the parties and upon motion of counsel for the
13 Complainant and Respondent, an extension of time for the
14 Respondent to file an answer was granted by the EPA judicial
15 officer. The terms of this Consent Agreement constitute a full
16 settlement of this civil administrative action without an
17 evidentiary hearing or the taking of any testimony.

18 D. Nudelmans has forwarded an affidavit to EPA to
19 establish that the bushings stored on site contained "Diala D"
20 and were therefore not PCB-containing bushings (Exhibit A
21 attached to this Consent Agreement). In addition, Nudelmans has
22 averred that its records indicate the bushings were purchased
23 from BPA (Exhibit A), and forwarded a copy of the purchase
24 agreement between BPA and Nudelmans evidencing the sale of the
25 bushings (Exhibit B).

1 E. Nudelmans has agreed to properly dispose of the
2 transformer that is the subject of Violation One of the
3 Complaint and to send to the Region 10 Hearing Clerk a copy of
4 the disposal certificate of said transformer by August 4, 1989.

5 F. EPA has agreed to mitigate the penalty assessment
6 set forth in the aforementioned administrative Complaint based
7 upon information obtained from the inspection and settlement
8 conference as follows:

9 1. EPA will withdraw Violation Two because Nudelmans
10 has established that the dielectric fluid which was the subject
11 of this alleged violation is of a type commonly known not to
12 contain PCBs.

13 2. The penalty for Violation Four would normally be
14 reduced because testing of the imputed PCB transformer conducted
15 subsequent to the inspection showed it to be a PCB-contaminated
16 transformer. However, the Complaint proposed a single penalty
17 of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) for Violations
18 Four and Five combined pursuant to the TSCA PCB Penalty Policy,
19 because the two (2) violations involved the same type of
20 violation, were in the same location, and posed the same risk.
21 Since Violation Five still stands as alleged, with no reduction
22 of penalty appropriate, a penalty of ONE THOUSAND FIVE HUNDRED
23 DOLLARS (\$1,500.00) remains assessed for Violations Four and
24 Five combined.

1 3. The penalty for Violation Six was reduced as
2 subsequent testing of the pieces of equipment for which record
3 keeping was allegedly required revealed that the equipment was,
4 either, non-PCB equipment or PCB-contaminated equipment.
5

6 II. FINDINGS OF FACT

7 A. On August 4, 1988, an inspection was conducted by
8 representatives of the Environmental Protection Agency at
9 S. J. Nudelman and Son, Inc. in Portland, Oregon. The
10 inspection revealed leaking in one imputed PCB transformer as
11 alleged in Violation One of the Complaint. Testing conducted
12 subsequent to the inspection revealed that said imputed PCB
13 transformer contained 125 ppm PCB and was therefore a
14 PCB-contaminated transformer.
15

16 B. The area where the above-described
17 PCB-contaminated transformer was stored had no walls, roof,
18 floor, or continuous curbing to prevent rainwater from reaching
19 the transformer.
20

21 C. The PCB-contaminated transformer described in
22 Paragraph 1 of the Complaint was not marked with a PCB label,
23 nor is the area where it was stored properly labeled as a PCB
24 storage area.
25

26 D. The inspection of Respondent's records revealed no
27 annual report regarding the disposition of the imputed PCB
28

1 transformer described in Paragraph 5 of the Complaint which was
2 subsequently determined by testing to be PCB-contaminated.

3 E. The alleged violations of TSCA by Nudelmans have
4 resulted in no known, apparent threat to public health and
5 safety. Nudelmans has cooperated with EPA in furnishing all
6 requested information, in agreeing to remove its
7 PCB-contaminated transformer, and in resolving the matters
8 covered by this Consent Agreement.

9 F. For the purpose of this proceeding, and pursuant
10 to 40 C.F.R. § 22.18(b), Nudelmans:

11 1. Admits the jurisdictional allegations of the
12 Complaint in this matter;

13 2. Neither admits nor denies the Findings of Fact
14 contained in this Order;

15 3. Consents to the assessment of the civil monetary
16 penalty stated herein;

17 4. Waives its right to request an adjudicatory
18 hearing except to the extent that the conditions of this Consent
19 Agreement are not met by EPA; and

20 5. Agrees that, solely for the purposes of
21 calculating and assessing penalties for future violations of
22 TSCA, if any, this Agreed Order is a "final order" as required
23 by the PCB Penalty Policy, 45 Fed. Reg. 59770 and 59773, for the
24 purpose of demonstrating a "history of prior such violations" as
25 provided in Section 16 of TSCA, 15 U.S.C. § 2615.
26

1 III. PROPOSED AND ADJUSTED CIVIL PENALTIES

2 A. In the Complaint, EPA proposed a total civil
3 penalty of FOURTEEN THOUSAND DOLLARS (\$14,000.00) for multiple
4 count violations of the regulations for disposal, marking,
5 labeling, and annual reporting contained in 40 C.F.R. Part 761.
6 Following the issuance of the original Complaint in this matter,
7 and based upon information obtained during the settlement
8 negotiations, EPA withdrew alleged Violation Two and reduced the
9 penalty for Violation Six for the reasons described in Section I
10 Paragraph F, above.

11 B. As a result of the foregoing, the penalty has been
12 reduced to EIGHT THOUSAND ONE HUNDRED DOLLARS (\$8,100.00)
13 conditioned upon performance by Nudelmans of the conditions more
14 specifically described below in Section IV of this Consent
15 Agreement.

16
17 IV. TERMS OF SETTLEMENT

18 A. For the purpose of resolving this action against
19 Respondent based on the allegations of the Complaint, without
20 prejudice to any other proceeding, the parties have agreed that:

21 1. This CAFO is in full and complete settlement of
22 all claims or causes of action alleged in the Complaint
23 currently on file in this matter.

24 2. This CAFO does not constitute admission by
25 Nudelmans of any violation of law or regulation.

26 3. Based upon a number of considerations, including
27

1 the removal of the PCB-contaminated transformer at issue, the
2 parties have agreed to a monetary settlement more specifically
3 described in the attached Final Order incorporated by reference
4 herein.

5 4. This Consent Agreement shall be binding upon the
6 parties and in full force and effect upon approval of entering
7 of the Final Order by the EPA Region 10 Regional Administrator.

8 5. S. J. Nudelman and Son, Inc. agrees to properly
9 dispose of the transformer that is the subject of Violation One
10 and to send to the Region 10 Hearing Clerk a copy of the
11 disposal certificate by August 4, 1989.

12 6. This Consent Agreement may be modified only by
13 writing, signed by the parties, and, upon such filing of a
14 stipulation, the changes would be automatically incorporated
15 into this Order.

16 7. Each of the terms and conditions of this Consent
17 Agreement is in consideration for all the other terms and
18 conditions contained herein. In the event this Consent
19 Agreement (or one or more of its terms and conditions) is held
20 invalid, or is not executed by all the signatory parties in
21 identical form, or is not approved in such identical form by the
22 EPA Region 10 Regional Administrator, the entire Consent
23 Agreement shall be null and void.

1 IN WITNESS WHEREOF, this Consent Agreement has been
2 signed by the lawful representatives of the parties whose
3 signatures appear below.
4

5 FOR COMPLAINANT:

6 FOR RESPONDENT:

7
8 _____
9 U.S. Environmental Protection
10 Agency

11 _____
12 S.J. Nudelman and Son, Inc.

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14 Date: _____

15 Date: _____
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9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 BEFORE THE REGIONAL ADMINISTRATOR
Region 10
Seattle, Washington

11 IN THE MATTER OF:)
12 S. J. NUDELMAN AND SON, INC.,) Docket No. 1088-09-33-2615
13 Respondent.) ORDER
14 _____)

15 ORDER

16 Pursuant to TSCA Section 16(a)(2)(c), 15 U.S.C.
17 Section 2615(a)(2)(c), upon consideration of the foregoing
18 Consent Agreement, upon consideration of the factors expressed
19 in TSCA Section 16(a)(2)(B), 15 U.S.C. Section 2615(a)(2)(B),
20 and other factors as described in the Consent Agreement, it is
21 this ____ day of _____, 1989, ORDERED THAT:

22 1. Respondent comply with the terms of the Consent
23 Agreement;

24 2. Respondent is assessed a civil penalty in the
25 amount of EIGHT THOUSAND ONE HUNDRED DOLLARS (\$8,100.00).
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28 ORDER - Page 1

1 3. Respondent shall pay TWO THOUSAND TWENTY-FIVE
2 DOLLARS (\$2,025.00) of the imposed penalty no later than thirty
3 (30) days from the date of this Order by mailing a certified
4 check or money order, payable to the United States Treasurer, to
5 the following:

6 United States Environmental Protection Agency
7 Region 10 (Region 10 Hearing Clerk)
8 P.O. Box 360903M
 Pittsburgh, Pennsylvania 15251

9 with a copy of the check and transmittal letter to:

10 Regional Hearing Clerk
11 Office of Regional Counsel
12 U.S. EPA, Region 10
 1200 Sixth Avenue, SO-125
 Seattle, Washington 98101

13 4. The remaining balance of the assessed penalty
14 amount shall be paid according to the following schedule:

15 A. The second payment is in the amount of TWO
16 THOUSAND TWENTY-FIVE DOLLARS (\$2,025.00) and is due one hundred
17 and twenty (120) days from the date of the Agreed Order;

18 B. The third payment is in the amount of TWO
19 THOUSAND TWENTY-FIVE DOLLARS (\$2,025.00) and is due two hundred
20 (200) days from the date of the Agreed Order; and

21 C. The fourth payment is in the amount of TWO
22 THOUSAND TWENTY-FIVE DOLLARS (\$2,025.00) and is due three
23 hundred (300) days from the date of the Agreed Order.

24 5. On any amount overdue under Paragraphs 2 and 3 in
25 this Order, interest shall accrue at the rate established by the
26 Secretary of the Treasury pursuant to 31 U.S.C. § 3717, from the
27

1 date on which the payment of money was due.

2 6. Any unpaid penalty amount may be liquidated and
3 made certain by motion and notice filed with the court to which
4 this Agreed Order is submitted for judgment and collection.
5 Such motion and notice may be served on the Respondent and shall
6 be effective if so served. Pursuant to TSCA § 16(a)(4)(A), 15
7 U.S.C. § 2615(a)(4)(A), the validity, amount, and
8 appropriateness of the penalty is not subject to review in any
9 judicial collection proceedings.

10 7. EPA shall be deemed to have waived its right to
11 contend, for civil purpose only, that the condition requiring
12 Respondent to file the disposal certification has not been met
13 unless EPA files a statement to this effect within thirty (30)
14 days after the said affidavit has been filed. Upon timely
15 filing of such a statement by EPA, each party may proceed as
16 permitted by applicable law.

17 8. The parties to this Order may amend and extend
18 the time set forth above to file the disposal certificate by a
19 signed stipulation to be filed with EPA. Any such amendments
20 shall be automatically incorporated in this Order.

21 DATED this ____ day of _____, 1989.

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24 _____
25 ROBIE G. RUSSELL
26 Regional Administrator
27 EPA Region 10
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